

Appl. No. 10/037,278
Amdt. dated January 3, 2006
Reply to Office Action of September 2, 2005

Amendments to the Drawings:

The attached are two sheets of drawings which include changes to Fig.1F and Fig. 2D. These sheets, which includes Fig.1F and Fig. 2D, replace the original sheets including Fig.1F and Fig. 2D.

In addition, replacement sheets for Figs. 2A – 2C' are also attached to replace the replacement sheets filed July 28, 2004, which were apparently misplaced by the U.S. Patent Office.

Attachment: Replacement Sheet

Annotated Sheet Showing Changes

REMARKS/ARGUMENTS

Pursuant to 37 C.F.R. § 1.114 and 1.116, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Claims 1-9 and 17-28 are presented for the Examiner's consideration. Claims 10-16 have been canceled.

The following response will address each of the Examiner's comments, objections and rejections in the order they were presented in the September 2, 2005 Office Action.

With respect to the drawings of the present application, the Examiner indicated that Figures 1A – 1E have been approved. Applicants wish to thank the Examiner for approving these drawings.

In a new requirement, the Examiner is now requiring that the Applicant provide comments why the photomicrographs are necessary. The photomicrographs are deemed necessary by the Applicants to allow a fuller understanding of the present invention by those skilled in the art by showing the microstructure of the fastener and cooperating fastener of the present invention. For example, Figs. 6 and 7 show the microstructure of the cooperating fastener of claims 4 and 5. Fig. 5A and Fig. 5B show the relationship of the fasteners to one another in the engagement section. As a result, the public will be better served by having the photomicrographs in a published patent rather than drawings since the photomicrographs will allow those skilled in the art to better understand the invention as compared to drawings alone.

The Examiner also states in the Office Action that the submitted drawings did not include replacements sheets for Figs. 2A-2C'. Applicants have included new replacement sheets for Figs. 2A-2C', as well as the annotated figures previously submitted.

Regarding Fig.1F, Applicants have resubmitted Fig.1F and have deleted reference numerals 11, 12 and 13. In addition, the left flap has been relabeled 36' and the right flap has been relabeled 36, at the Examiner's request. Further, the specification at page 5 has been amended to state that Fig 1F shows a cross-section.

Next the Examiner questions where B, PS, GA , 71, T and AB are described in the paragraph starting at page 9, line 20 and the paragraph starting at page 10, line 3. Applicants direct the Examiner's attention to the Amendment filed July 28, 2004. Each of these paragraphs have been amended (page 3 of the amendment) to describe each of B, PS, GA, T and AB. In

addition, the paragraph beginning at page 9, line 20 was amended to indicate that 71 is shown on Figs. 1D and 1E, therefore showing this in Fig. 1F is unnecessary.

Regarding Fig. 2D, the attached correction to Fig. 2D underlines element 58. Hence, this objection should be overcome.

The Examiner also finds that elements 110, 112, 114 and 116 are not shown in Figs. 2A - 2E as described in the paragraph on page 13, line 16. Applicants again direct the Examiner's attention to the Amendment filed July 28, 2004. This paragraph was amended to refer to Figs. 2A-2C' and does not refer to drawings 2D or 2E. Figs. 2A – 2C', which are attached hereto, show each of elements 110, 112, 114 and 116, as set forth in this paragraph, as it is currently amended.

On page 4 of the Office Action, the Examiner objects to the drawings under 37 CFR 1.83(a) on the basis that the drawings do not show the sheets, the core and the perforation lines. The Examiner's attention is directed to Fig. 1F, which clearly shows the top sheet, the backsheet and the absorbent core. Therefore, these features are clearly shown by the drawings. In addition, Figs. 1D and 1E show the perforation lines 71 and the corresponding text in the specification at page 9, line 20, et seq. was amended to indicate that Figs. 1D and 1E show perforation lines 71. Therefore, the Examiner's objection to the drawings under 37 CFR 1.83(a) is improper, since the noted features are shown in the drawings.

Claims 1-9 and 17-28 were rejected under 35 U.S.C. § 102(e), as allegedly being anticipated by Hammons et al., U.S. Patent Application Publication US2003/0004484. This rejection is again respectfully **traversed**.

As has been previously argued, Hammons et al. fail to anticipate claims of the present application, contrary to the Examiner's assertion. Specifically, Hammons et al. do not teach or suggest that **one of the first fasteners is unengaged with the cooperating fastener and the unengaged first fastener component is positioned adjacent the backsheet layer so it is adapted to engage the fabric of an undergarment.** Applicants specifically request the Examiner to point out where Hammons et al. specifically teach this limitation. Applicants' undersigned representative has reviewed Hammons et al. and is unable to find where this limitation is taught. The portions cited by the Examiner, in particular Figs. 7-8 of Hammons et al., are directed to adhesive fasteners as the fastening mechanism, see paragraph 122 of Hammons et al. Regarding Fig. 6 of Hammons et al., Fig. 6 is essentially the napkin of Fig. 1

applied to a panty. In Fig.1, fastener 52 is the hook fastener and fastener 54 is the loop fastener. As a result, the hook fastener can not engage the panty, as is clearly required by the present claims.

Hammons et al. fail to disclose the invention as claimed and clearly cannot support a *prima facie* case of anticipation. While Applicants would agree that Hammons et al. teach that mechanical fasteners may be used, Hammons et al. clearly suggest, by way of the description of the drawings, that adhesive fastening systems are preferred. For example, in the brief description of the drawings, the description of top plan view of the sanitary napkin FIGS. 1, 7, 9, and 11 clearly describe the sanitary napkin as having an adhesive on the flaps as the fastening system.

In addition, there is no teaching within Hammons et al. which directs one skilled in the art to use a mechanical fastening system as claimed. While Hammons et al. teach that mechanical fastening systems may be used, Hammons et al. do not teach that a first fastener component, with its plurality of engagement members, is positioned to engage the undergarment, which the sanitary napkin is designed to protect, as set forth in the present claims 1, 17, 27 and 28. Therefore, the disclosure of Hammons et al. fail to teach all of the claim limitations of the present claims, hence the rejection under 35 U.S.C. § 102(e) is untenable.

In order for the sanitary napkins of Hammons et al. to be able to engage the undergarment positioned between the wings and the backsheet, the fastener component with the engagement members must be placed on the wings or flaps on the side opposite the absorbent, so that when wrapped around the undergarment, as shown in Fig. 6 of Hammons et al., the engagement members will not contact the undergarment, contrary to the Applicants' previous statements. However, in the configurations of Hammons et al., purportedly having a first fastener component and a cooperating fastener component on both wings or flaps, i.e., those shown in Figs. 7-12 of Hammons et al., Hammons et al. fail to teach or suggest that the fastener with the plurality of engagement members should be located on a surface of the wing or flap which will come into contact with the undergarment, in the description of these drawings. (See paragraphs [0121], [0122], and [0123]) In lack of such a teaching, Hammons et al. cannot anticipate the present claims.

Applicants again request that the Examiner withdraw this rejection or specifically point out where Hammons et al. teach the claim limitation requiring that one of the first fasteners is

unengaged with the cooperating fastener and the unengaged first fastener component is positioned adjacent the backsheet layer so it is adapted to engage the fabric of an undergarment. The Examiner merely dismisses this limitation as being functional; however, this limitation recites the location of the plurality of engagement members in relation to the undergarment when the sanitary napkin is placed on the undergarment. These properties are not inherent in Hammons et al., since the location of the engagement members of the mechanical fasteners of Hammons et al. is not clearly specified.

To maintain this rejection, the Examiner needs to specifically and clearly point out how each and every claim limitation is met by Hammons et al., including the limitations set forth in the last phrase of the claim, regarding the claim limitation requiring that one of the first fasteners is adapted to engage the undergarment positioned between the wings of the sanitary napkin. As is set forth above, this limitation limits the location of the plurality of engagement members on the wings. Such a limitation is not taught or suggested by Hammons et al.

In response to these arguments which have been previously presented, the examiner merely dismisses these arguments as being "narrower than the prior art rejections".

Claims 1, 6-9, 17-18 and 24-28 were rejected under 35 U.S.C. § 102(b), as allegedly being anticipated by Bien, U.S. Patent 5,704,929 and thus Mattingly, U.S. Patent 4,608,047. This rejection is respectfully **traversed**.

Bien fails to disclose the invention as claimed and cannot support a *prima facie* case of anticipation. While it might be argued that Bien discloses use of a mechanical fastening system on the wings of a sanitary napkin by its reference to Mattingly, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Applicants specifically request the Examiner to point out where Bien specifically teaches this limitation. Applicants' undersigned representative has reviewed Bien and is unable to find where this limitation is taught.

In the statement of the rejections, it is rather clear that the Examiner is reading more into the teachings of Mattingly than actually exist in Mattingly. Specifically the Examiner states on page 7, paragraph 10 of the Office Action:

"It is noted that portions of Mattingly are considered to teach that the cohesive structure in Figure 10 could be adhesive or VELCRO [sic, VELCRO®] instead, i.e. the fastener components is the one fastener directly adjacent exterior [sic, the exterior] of the undergarment".

To support this statement, the Examiner relies on column 6, line 44 - column 7, line 5, column 2, lines 17-32 and column 8, lines 9-41 of Mattingly.

This statement is overly broad and goes beyond the teachings of Mattingly. Nothing in Mattingly suggests that the VELCRO® system can be used in a configuration shown in Figure 10 of Mattingly. A careful review of the sections of Mattingly noted by the Examiner reveals the following: 1. Mattingly suggests that mechanical attachment means may be used, in addition to adhesive and cohesive means to attach the flaps to one another; 2. The cohesive means is shown in Figure 10 of Mattingly; and 3. The mechanical means is shown in Figure 11 of Mattingly. Specifically, column 6, line 61 - column 7, line 5 states:

"Still other means for affixing the flaps in place will occur to those skilled in the art such as, for example, replacing the adhesive system with cohesive material, i.e., material capable of adhering to itself but not to other substrates. In this way both sides of the **flap may be coated with cohesive material 34'** as illustrated in FIG. 10, and no unique order of folding is required. This also carries the advantage that there is no adhesive applied to the outer crotch portion of the undergarment. In still another embodiment, **mating elements of hooks 35 and loops 35'**, the so-called Velcro binder system (Velcro is a trademark of Velcro USA, Inc.) may be employed. ***This is illustrated in FIG. 11.***" (emphasis added)

Clearly, the above quoted passage shows if a cohesive system is used, it is to be used in the configuration of Figure 10 and if a Velcro® is used, it is used in the configuration of Figure 11. Nothing in Mattingly states or teaches that a Velcro® system can be used in the configuration of Figure 10, as the Examiner has stated or implied. Therefore, the Examiner's premise for the rejection is unsupported by the actual teachings of Mattingly.

For this reason, not to mention that not all of the structure of the present claims is taught by Bien and Mattingly, as argued by the Examiner, the Examiner has not established a *prima facie* case of anticipation. In order for a rejection under 35 U.S.C. § 102 (b) to be tenable, all of the limitations of the claims must be taught by a prior art reference. Since, the configuration of

the fastener components, as claimed, are not taught by Bien (incorporating Mattingly), the rejection under 35 U.S.C. § 102(b) based on Bien is untenable and should be withdrawn.

Applicants again request that the Examiner withdraw this rejection or specifically point out where Bien teaches a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Again the Examiner addresses this claim limitation by stating that the limitation of the last phrase of each of the independent claims is inherent.

Claims 4-5 and 22-23 were rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over Bien, U.S. Patent 5,704,929 in view of Leak et al. U.S. Patent 5,763,041. This rejection is respectfully **traversed** to the extent that it may apply to the claims, as amended.

As is noted above, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Leak et al. fail to cure this fatal deficiency of Bien.

Leak et al. is directed to laminates suited for use as the loop components of hook and loop fasteners. According to Leak et al., a conventional separate, discrete patch of loop material is undesirable. See Leak et al. at col. 9, lines 15-22. While it might be argued that Leak et al. teach that its laminate can be used as a loop component anywhere hook and loop fasteners are employed, Leak et al. specifically teach replacing a conventional, discrete patch of loop material such as taught by Mattingly with a laminate that forms the outer cover of a diaper to provide engagement at any location on the outer surface of the diaper. However, Leak et al. fail to suggest having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner

which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet.

In order for a combination of references to establish a *prima facie* case of obviousness, the combination of references must teach the invention, as a whole, including all of the limitations of the claims. See In re Royka, 180 USPQ 580 (CCPA 1974). If a given combination of references does not anticipate, in the case of Bien and Mattingly as discussed above, or render obvious, in the case of Bien and Mattingly combined with Leak et al., the limitations of the independent claims, then any claim depending from the independent claim is nonobvious. See In re Fine, 5 USPQ2d 1596 (Fed. Cir 1988).

Given that Leak et al. fail to cure the noted deficiencies of Bien, the obviousness rejection under 35 U.S.C. § 103(a) based on the combination of Bien with Leak et al. is untenable and should be withdrawn.

Claims 2-3 and 19-21 stand rejected under 35 U.S.C.103 as being unpatentable by U.S. Patent 5,704,929 to Bien in view of U.S. Patent 5,723,884 to Osborn, III et al. Applicants respectfully **traverse** this rejection to the extent it might apply to the claims, as amended.

As is noted above, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Further, Bien lacks the teachings of having a first fastener component on both wings or flaps with a cooperating fastener component on both wings or flaps, one of which is capable of interengaging one of the first fasteners. Osborn, III et al. fail to cure these deficiencies of Bien.

The portion of Osborn, III et al. relied upon by the Examiner, Figures 44-45, teach placing a hook material on the wings or flaps to engage the undergarment. However, Osborn, III et al. fail to teach that the hook material can engage the other flap, in particular a cooperating fastener on the other flap, as required by the present claims. Further, the hooks of Osborn, III et al. are located and designed to engage the elastic of the undergarment, as is set forth in column 50, line 55 - column 53, line 39. Osborn, III et al. do not teach having the flaps or wings contact

each other such that one mechanical fastener will engage with a cooperating fastener on the other wing or flap.

In order to establish a *prima facie* case of obviousness, there must be some motivation or suggestion to modify the references and there must be some reasonable expectation for success. Given that the function of the flaps or wings in Osborn, III et al. is to physically attach the flaps or wings to the undergarment, without overlapping the flaps or wings, and the function of the flaps or wings in Bien (Mattingly) is to surround the undergarment without physical attachment, the purposes of the wings or flaps in Bien and Osborn, III et al. are different and one skilled in the art would not have been motivated to combine the teachings of Bien with Osborn, III et al., as the Examiner has done.

Claims 1-9 and 17-28 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent 6,843,785. Applicants respectfully traverse this rejection.

Applicants point out that the claims of U.S. Patent 6,843,785 are directed to **a process of attaching the sanitary napkin to an undergarment**. In clear contrast, the claims of the present application are directed to **a sanitary napkin with a garment attachment system**. The Examiner has not provided any reasons why the process of the claims of the '785 patent render the sanitary napkin claims of the present application obvious. The Examiner merely states that the claims of the present application are generic or are broader than those of the '785 patent. Applicants do not understand how the sanitary napkin claims of the present application are broader than the process claims of the '785 patent. The Examiner, in response to this argument, states that claims of the present application are broader than the claims of the '785 patent.

Applicants point out that the claims of the '785 patent are directed to a process of using the wing structure of a sanitary napkin, and not to the product per se. In clear contrast, the claims of the present invention are directed to a product, and not to a process of using that product. Surely if the claims of the '785 patent were presented in this application, the Examiner would have required a restriction as being directed to different classes of invention. Applicants will, however, file a terminal disclaimer upon finding allowable subject matter in the present application.

Appl. No. 10/037,278
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Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc.
deposit account number 11-0875.

The undersigned may be reached at: 920-721-3892.

Respectfully submitted,

YVETTE L. HAMMONDS ET AL.

By:

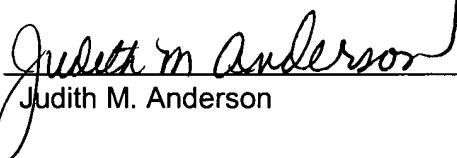


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CERTIFICATE OF MAILING

I, Judith M. Anderson, hereby certify that on January 3, 2006 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By:



Judith M. Anderson



K-C Docket: 17705 – Yvette L. Hammonds et al.
SECONDARY ATTACHMENT SYSTEM FOR PERSONAL
CARE ARTICLE

ANNOTATED SHEET

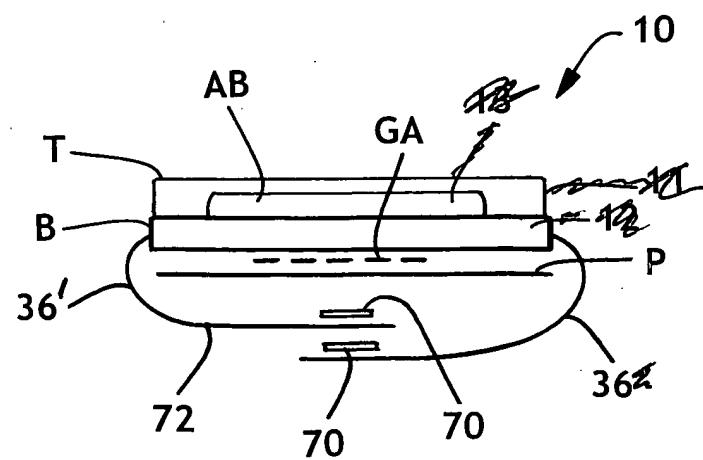


FIG. 1 F



K-C Docket 17705 – Yvette L. Hammonds et al.
SECURITY ATTACHMENT SYSTEM FOR PERSONAL ARTICLE

Annotated Sheet Showing Changes

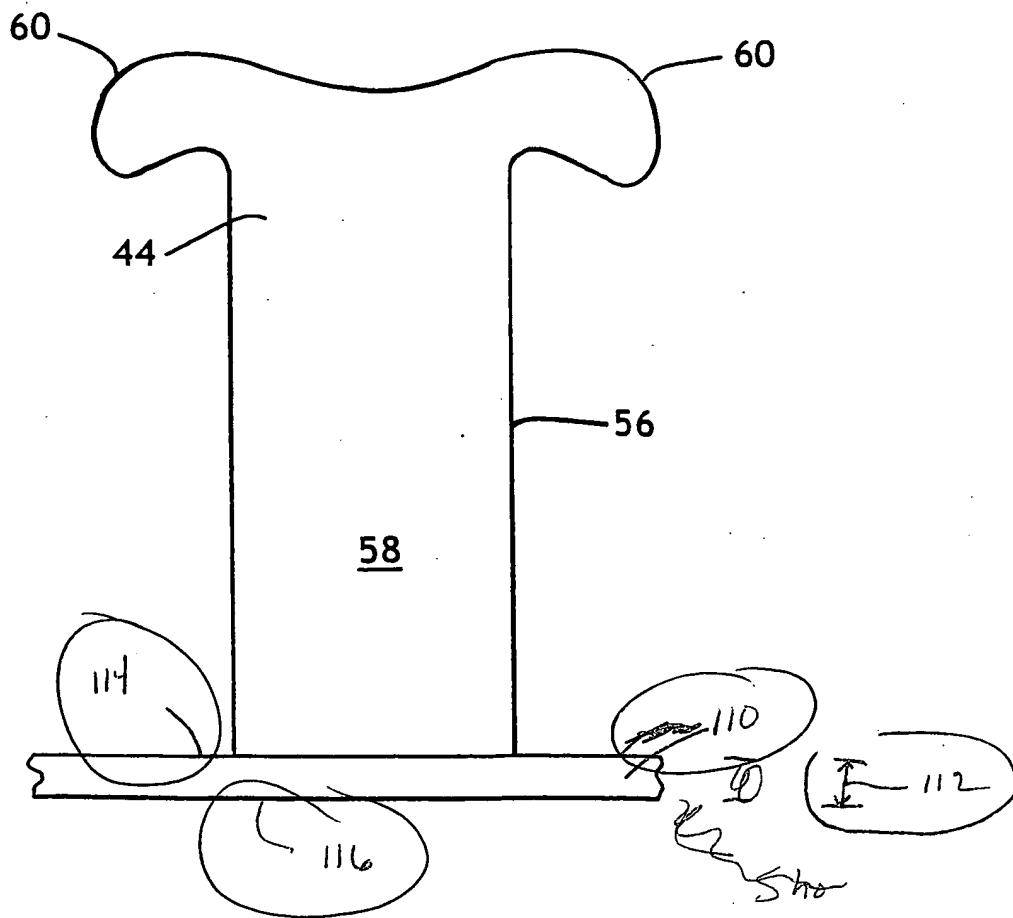
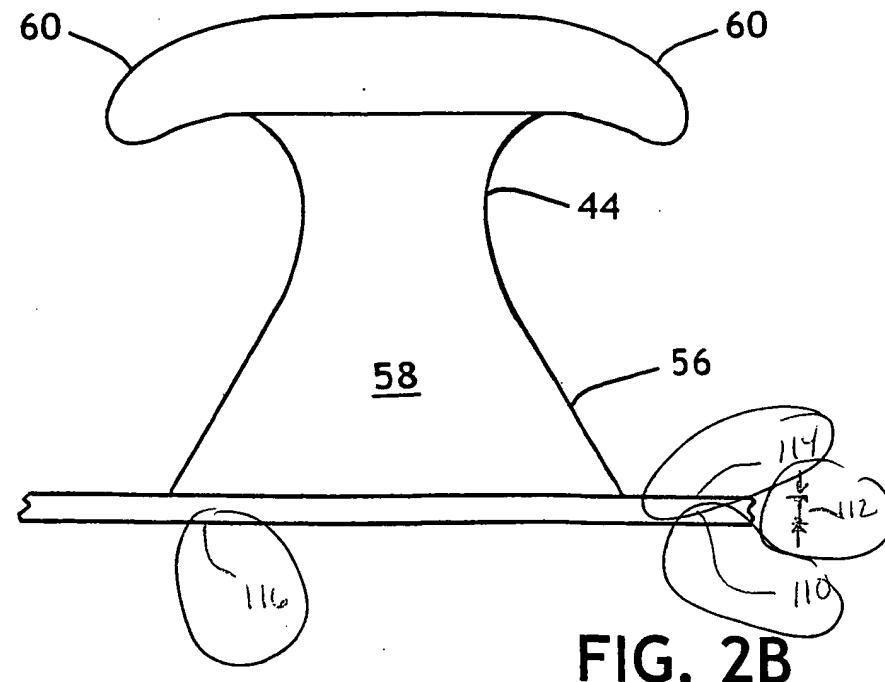
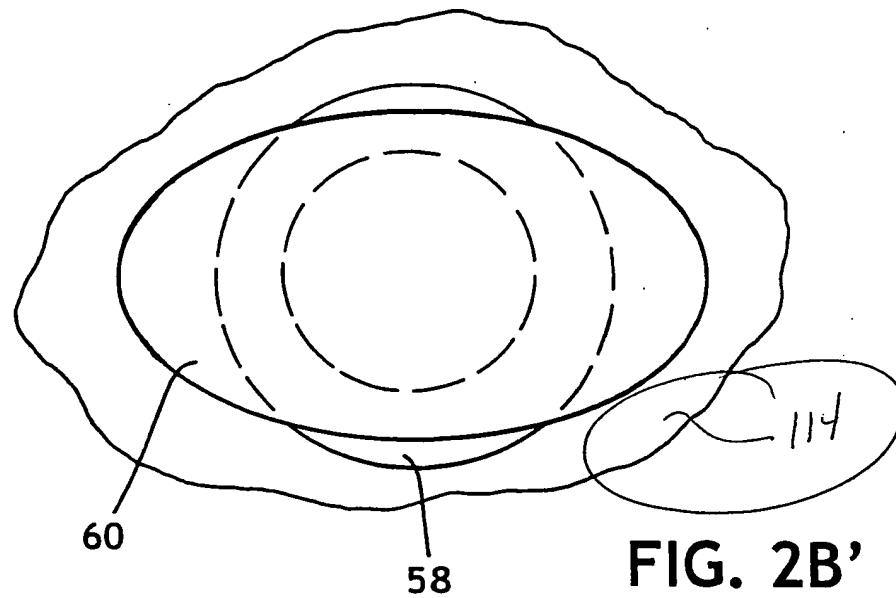


FIG. 2A



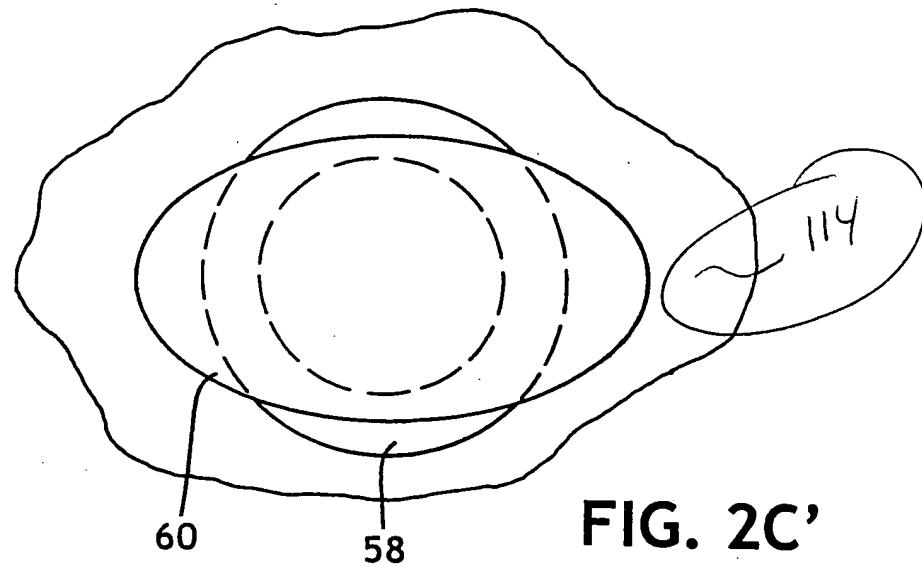


FIG. 2C'

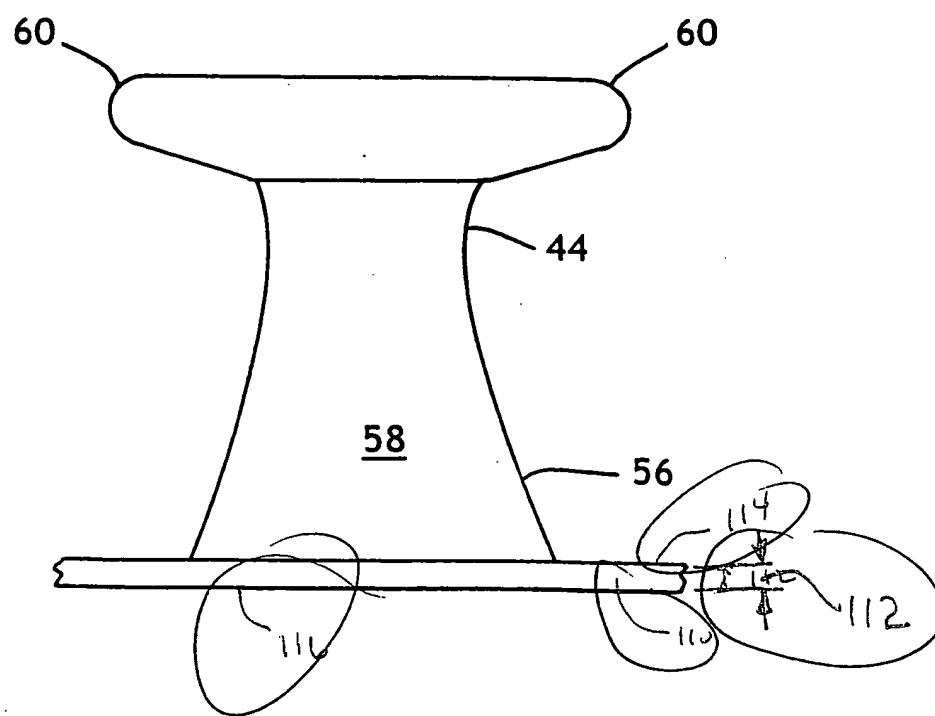


FIG. 2C

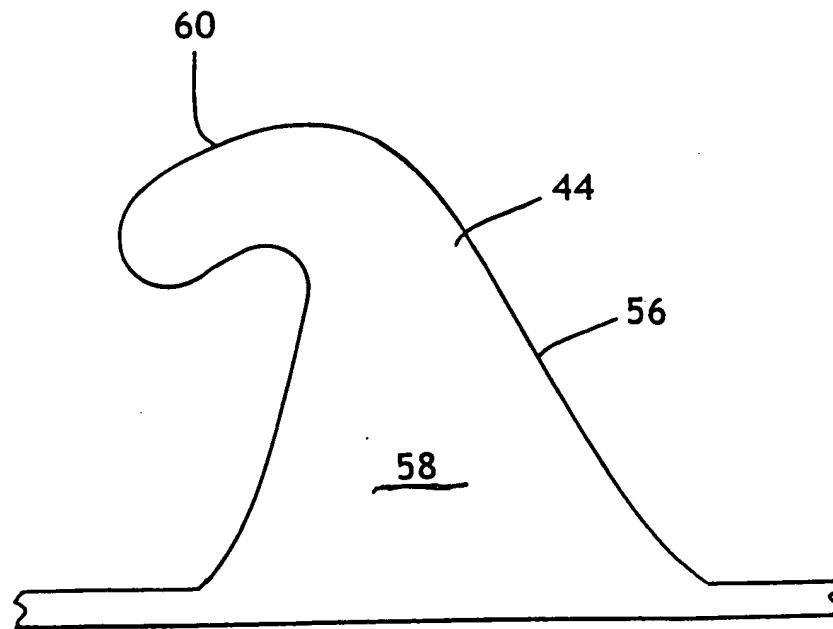


FIG. 2D